13

(3)

CASE NO. 07-190

FILED
NOV 5 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2006

MICHAEL CIEKLINSKI AND ALLAN NAIRN,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

Michael Cieklinski, and
Allan Nairn, *Pro Se*
830 S. Boulder Hwy, No. 112
Henderson, NV 89015-3543
Tel 702-204-2339

QUESTION PRESENTED FOR REVIEW

May an appeals court **affirm** a tainted Decision and Order by two National Labor Relations Board *members* (pilloried in a Chairman's dissent) designed to overrule an Administrative Law Judge's Decision, Order, and Compliance Determination made **after a fair trial**, or **affirm** a Regional Director's Revised Compliance Determination that stripped a "charging party" of his collective bargaining agreement "out-of-work list" status, and proved that Local Union 357, the **NLRB's certified** *exclusive bargaining representative* of **Employees**: did not offer Petitioners, who lived and worked in Las Vegas for 22 years and 12 years, respectively, "membership" within 30 days, *as required by law*; dispatched its own *members* to **Employers'** jobs before them; took their CBA "wages" for its won Trusts, Funds and committees; assaulted and blacklisted them for demanding "equal rights"; made **Employers'** supervisors "members" for blacklisting "non-members"; and routinely lied to, cheated, and stole form these nonmembers and all others, in the face of federal laws.

LIST OF ALL PARTIES

Petitioners/Appellants Michael Cielinski, and Allan Nairn, and Respondent National Labor Relations Board.

TABLE OF CONTENTS

page

CITATIONS TO OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

TABLE OF STATUTES 1

RESTATEMENT OF THE CASE 2

A. THE TRIAL, AND BACKGROUND 2

B. CONCLUSION 4

REASONS FOR GRANTING A REHEARING

I. An Administrative Law Judge presided over the NLRB trial and filed a Decision, an Order and Compliance Determination in Petitioners' favor, a Board reviewed the ALJ's rulings and eviscerated them in an *ex post facto* Decision and Order by two members who out-voted the Board chairman, a regional director abused her Revised Compliance Determination to negate one charging Petitioner's Group One out-of-work list status which, like that Board's Decision and Order, conflicted with decisions of this Court, and other appellate and district courts, departed from the usual course of such judicial proceedings, and requires the exercise of this Court's powers of supervision.

TABLE OF AUTHORITIES

Beck v. Communications Workers of America, 468 F.Supp. 93 (1979), affd., 776 F.2d 1187 (4th Cir. 1985); *aff'd en banc*, 800 F.2d 1280 (1986); *Communications Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988)

Int. B'hood Elec. Wkrs. L.U. 357, et al., 343 N.L.R.B. No. 136 (2004)

N.L.R.B. v. Laborers' Union, 748 F.2d 1001 (5th Cir. 1984), cert. denied, 105 S. Ct. 1845 (1985)

N.L.R.B. v. Mike Yurosek & Sons, Inc., 53 F.3d 261, 265 (9th Cir. 1995)

New England Telephone and Telegraph Co. v. Int'l B'hood of Elect. Wkrs. 384 F. Supp. 752 (D. Mass. 1974)

Radio Officers' Union of Commercial Telegraphers, 74 S. Ct. 323 (1954)

Retlaw Broadcasting Co. v. N.L.R.B., 53 F.3d 1002 (9th Cir. 1995)

Wooddell v. IBEW Local 71, 116 L.Ed.2d 419 (1991)

CITATIONS TO OPINIONS BELOW

Int. B'hood of Elect. Wkrs. Local 357 AFL-CIO (Newtron Heat Trace, Inc.) and Michael Cieklinski, et al., Cases 28-CB-5957, and 28-CB6013 (presiding ALJ's Decision, Order, and Compliance Determination, dated June 15, 2004), NLRB Decision and Order, dated December 16, 2004, and Revised Compliance Determination, dated July 15, 2005 (343 NLRB No. 136). See Petitioners' Supplemental Appendix.

STATEMENT OF JURISDICTIONAL GROUND

Federal Rule of Appellate Procedure 15 (a) provides for appeals from National Labor Relations Board's Decisions and Orders, and includes Compliance Determinations – revised or not – by regional directors, and others, delegated or not, as per sections of Labor Management Relations Act §§ 153, and 159 (29 U.S.C. §§ 153, 159), and this Court may review this matter under 29 U.S.C. § 1254(1), and its Rules 10 and 44.

TABLE OF STATUTES

Labor Management Relations Act . § 141,
(29 U.S.C. § 141)

Labor Management Relations Act ("LMRA")
§158(a)(3), (29 U.S.C. § 158)

L.M.R.A. § 15(b)(1)(A) (29 U.S.C. § 158)

L.M.R.A. § 158 (b)(2) (29 U.S.C. § 158)

---

*Respondent NLRB uses "NLRA" rather than L.M.R.A. cites.

RESTATEMENT OF THE CASE

The International Brotherhood of Electrical Workers ("IBEW") certifies 40 classifications of "members," but those in construction local unions ("LU") violate provisions of its constitution/contract with local unions and members most, as well as the Labor Management Relations Act, and the Labor Management reporting and Disclosure Act, but Las Vegas based L.U. 37 abuses those laws with tribalistic criminal practices that are anathema almost everywhere in America.

However, an ongoing myth that the government-certified L.U. 357 "exclusive bargaining representative" of Employees will also "manage" CBA Employers job "Referral Procedure" may be the most outrageous scam in American labor law. [1]

A. THE TRIAL, AND BACKGROUND

The abuses were proved at the NLRB trial, and included: an ass't business manager's threat that Cieklinski will never be a L.U. 357 "member" if he asserts his Group One rights; dispatcher Large's threat that he would be "fired" after 41 hours for accepting a job offer in his turn; members' threats of assault, and battery against Cieklinski, Nairn, and Richard Henderson (who, like L.U. 357's business manager-boss was from North Carolina, and got a generous settlement); tenuous testimony of L.U. 357' and Appeals Committee officer Miles, job dispatcher Large, and IBEW's representation Tilmont that was equivocal at best, and ignored the fact that attitudes of L.U. 357 members were inflamed at monthly

[1] The ALJ mis-stated L.U. 357 represents general foreman" and could be an "exclusive source of referrals of employees."

meetings (please see Petitioner's Supplemental Appendix, at pp. 7-11)

L.U. 357's members "questioned and jibed" Henderson, threatened to "whip [his] ass," "set [him] on fire," cursed him, and "blocked his way" to receive a "job referral" which L.U. 357 dispatcher Bennington delayed to see if the abuses worked, or Henderson accepted a job (Supp. Apx. Pp. 12-15).

L.U. 357 Agent/Dispatcher Large testifies a "commotion was going on," and that "arguments" in the hiring hall were "common," but Juanita Hall, who worked out of that "hiring hall" since 1995, said she never saw any argument, and L.U. 357 stated in its posthearing brief that, "what was said to [Henderson} cannot be debated" (Supp. Apx. Pp. 11-15).

L.U. steward Egge, on a Big Horn powerhouse, told Newtron Heat Trace, Inc. supervisor Bellard a **book jumper,** Henderson, was referred to that job before he arrived, and Egge asked that supervisor to deny Henderson employment, with threats of "wires being cut," "people not showing up for work" and "concrete being poured down pipes" if Henderson was "spun" (rejected), but Henderson was already hired. (Egge denied the statements, but superintendent Bellard was found to be "forthright and sincere," whereas Egge was not.

L.U. 357's assistant superintendent Westover weighed in to state "the company should do the right thing, "and he was not happy with "book jumpers," and offered Mr. Bellard "a [membership] ticket [in L.U. 357] down the [road] for you." However, it is important to note that Henderson accepted his job offer in his turn, didn't "book jump," and Mr. Westover later "denied having any such conversation with Bellard." (Supp. Apx. At p. 16)

Mr. Bellard hired Henderson, but within the first week Union steward Egge told Bellard he "did not like having [the properly referred] Henderson on the job, [and] that nobody else liked having a book jumper on the payroll," Bellard said "work[ers] are slowing down," and Egge stated "if Newtron got rid of the "traveler" more work would get done faster," and discouraged "overtime" work (Supp. Apx. pp.16-17).

Shortly after May 23, 2003 Ciekliinski went to the CBA-created hiring hall to also accept a job offer by Newton, and was directed to report to Newtron on May 27, 2003, but the L.U. 357 members yelled and screamed at him, and verbally attacked Henderson, and Allan Nairn, while L.U. 357 agents Large, another dispatcher, Poma, Bennington, and Westover watched, but Henderson taped those exchanges with L.U. 357 members, who directed loud and confrontational comments, and cursed and swore at him.)Supp. Apx., pp. 18-20).

Westover again telephoned Bellard, who first refused to reject Cieklinski, and Bellars's supervisors first supported his decision, but two days later supervisor Allen told Bellard to not hire Cieklinski, and Bellard told Cieklinski "it was out of his hands." A couple of days later Egge told Bellard that prior to Cieklinski's reporting to the jobsite Egge had warned Allen of potential sabotage problems if they hired Cieklinski. In fact, some sabotage had occurred at the jobsite, but investigation failed to identify the instigator(s), and Egge admitted having dinner with Mr. Allen. (Supp. Apx. p.20).

In June Allen told Bellard he couldn't wait to get rid of the other book jumper (Henderson), and two or three weeks later told Bellard to lay Henderson off, to make it look legitimate – like they weren't picking

also, by lying to them that work is coming to an end. The ALJ found Bellard to be a "forthright and sincere witness." (Supp. Apx. pp.20-21)

Henderson and Nairn signed CBA out-of-work lists again but were harassed by Union members as officers Bennington, Large and Poma watched. After enduring hostile reproaches they left, but were confronted in the parking lot September 15, 2003 by a group of eight people, led by Executive Board chairman Gering (Supp. Apx. Pp.21-24). [2]

B. CONCLUSION

These factual findings, together with the ALJ's cites to relevant authorities and victims' Petition to this Court, should prompt, at minimum, a circuit court's remand to the NLRB.

---

[2] Gering's verbal assaults on Henderson, and Nairn, included pepperings of the f___ word, interspersed with illogical, tribalistic nonsense meant to cover his inadequate education, which typically results in physical violence if perpetrators have time to be frustrated enough, but Mr. Nairn voluntarily gave a job referral back, as Large watched, and the two left.

Certification of Parties Unrepresented by Counsel

This petition for the rehearing of a decision, and entry of an order denying a petition for writ of certiorari No. 07-190, dated October 9, 2007, is presented in good faith and not for any delay.

Payment of a required filing fee of $200.00 is included.

Petitioners certify this "petition for rehearing" is limited to intervening circumstances of a substantial, or a controlling effect and other substantial grounds not previously presented.

Dated: 11-19-07

Michael Cieklinski

11-19-07

Allan Nairn

PROOF OF SERVICE

Michael Cieklinski and Allan Nairn, Petitioners,	)	Case No. 07-190
	)	Appeal No. 05-75079
v.	)	
National Labor Relations Board Respondent.	)	Nos. 28-CB-6013 28-CB-5957

The undersigned declares under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above-named person with the following documents:

PETITION FOR REHEARING

I delivered the documents in the following manner:

X By placing a copy in a separate envelope, with postage fully prepaid, for each address named below.

Aileen A. Armstrong
National Labor Relations Board
1099 14th Street N.W.
Washington, D.C. 20570
Tel 202-273-2960

Executed on November 19, 2007 at Las Vegas, Nevada.

Barbara Lockhart